IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12438 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AMBUJA EXPORTS LTD

Versus

GOVERNMENT OF INDIA

Appearance:

1. Special Civil Application No. 12438 of 2004
MR PARESH M DAVE for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 02/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Assistant Commissioner, Central Excise and Customs, Gandhinagar by his impugned order-in-original (Annexure `E') passed on 24.09.2002 rejected the referred claim of the petitioner-company, against which the petitioners filed appeal before the Commissioner (Appeals), Ahmedabad, which was allowed by the Appellate Commissioner on 01.11.2002 (Annexure `F'), whereby the Commissioner (Appeals) set aside the impugned order at Annexure `E' passed in order-in-original and granted all the consequential reliefs in favour of the petitioners. This was challenged in appeal before the Customs, Excise & Service Tax Appellate Tribunal, West Regional Bench at Mumbai (for short "CESTAT") by the Commissioner of Central Excise, Ahmedabad-III-present respondent no. 2. In absence of the petitioners, the CESTAT by its impugned order dated 12.04.2004 Annexure `G' allowed the appeal against the petitioners mainly relying on the judgment of the Punjab & Haryana High Court in case of Vardhman Polytex Ltd. V/s Union of India reported in 2001(135) ELT 17 (P & H). This has been challenged in this petition by the petitioners.

#. Learned counsel Shri Dave for the petitioners submitted that the impugned order dated 12.04.2004 Annexure `G' was received by the petitioners somewhere in July, 2004. Thereafter, the Hon'ble Supreme Court by its judgment dated 10.08.2004 reversed the judgment of the Punjab & Haryana High Court in case of Nahar Industrial Enterprises Ltd. & Ors. V/s Union of India & Ors. reported in 2004(63) RLT 805 (SC) (Annexure `I'). Thereafter, without wasting any further time, the petitioners approached this court by way of this petition on 24.09.2004. He, therefore, submitted that the impugned order at Annexure `G' passed by the CESTAT relying on the judgment of Punjab & Haryana High Court in case of Vardhman Polytex Ltd. (supra) has to be quashed and set aside in view of the latest judgment of the Hon'ble Supreme Court in case of Nahar Industrial Enterprises Ltd. & Ors. (supra). In case of Nahar Industrial Enterprises Ltd. & Ors. (supra), the Apex Court has specifically overruled the judgment of Punjab & Haryana High Court in case of Vardhman Polytex Ltd. (supra) which was relied upon by the CESTAT for allowing the appeal of the department against the petitioners. In that view of the matter, Mr.Malkan could hardly support the impugned order at Annexure `G' passed by the CESTAT.

#. In view of the above, this petition is allowed and the impugned order at Annexure `G' dated 12.04.2004 passed by the CESTAT is hereby quashed and set aside and the order in appeal dated 01.11.2002 Annexure `F' passed by the Commissioner of Central Excise (Appeals) in favour of the petitioners is restored. Rule is made absolute. No costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

srilatha